California Fair Political Practices Commission

MEMORANDUM

To: Chairman Getman and Commissioners Swanson, Knox, Downey and Scott

From: Luisa Menchaca, General Counsel
Holly B. Armstrong, Legal Division, Staff Counsel

Re: Proposition 34 Regulations: Treatment of Outstanding Debt and Officeholder Expenses (§85316) -- Pre-notice Discussion of Proposed Regulations 18531.6 and 18531.7.

Date: May 29, 2001

Introduction

As a result of the changes to the Political Reform Act ("the Act") brought about by Proposition 34, as of January 1, 2001, the Act imposes limitations on post-election fundraising.

Government Code section 85316[1] provides:

> A contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

In addition, section 83 of Proposition 34, an uncodified section, provides:

> This act shall become operative on January 1, 2001. However, Chapter 5 (commencing with Section 85100) of Title 9 of the Government Code, except subdivision (a) of Section 85309 of the Government Code, shall apply to candidates for statewide elective office[2] beginning on and after November 6, 2002.

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[1] All statutory references are to the Government Code, unless otherwise specified.

[2] As amended by Proposition 34 "'[s]tatewide elective office' means the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, and member of the State Board of Equalization." (Section 82053.) The limitations in effect as of January 1, 2001, therefore, apply generally to legislative offices.

Section 85316 and uncodified section 83 raise several important issues, including:

- Does section 85316 of Proposition 34 apply to elections held prior to January 1, 2001? How will it apply to candidates for statewide offices as opposed to legislative offices?

- To what extent does section 85316 limit post-election fundraising? In other words, is a candidate required to pay his or her campaign debts with funds raised pursuant to section 85316, or does section 85316 merely provide a fundraising cap, with little or no restrictions on how the candidate may spend money raised?

- To the extent section 85316 limits campaign fundraising for "officeholder expenses," how can this be accomplished when a candidate or officeholder has no outstanding debt?

- How do section 85316 and uncodified section 83 interact with other provisions of Proposition 34?

An interested persons' meeting was conducted on May 9, 2001, to discuss issues raised by section 85316. The meeting was attended by a cross-section of individuals from the regulated community, and there was active participation among those present on all of these issues.

The staff has drafted proposed regulation 18531.6 to address the issues identified. The threshold decision of whether or not to apply section 85316 to contributions for elections held prior to the effective date of the statute is addressed first in the proposed regulation, presenting two different approaches. This is intended to provide the Commission with a frame of reference from which to begin its consideration of the other issues addressed in the regulation for purposes of pre-notice discussion. Like the language of proposed regulation 18531.6, discussion of the regulation in this memorandum is organized by decision points.

Proposed regulation 18531.7, which concerns officeholder funds allowable under Proposition 208, is also addressed in this memorandum. Regulations 18531.6 and 18531.7 are presented together to present a full discussion of all the "officeholder expense" issues raised by Proposition 34 and by the repeal of the officeholder provision of Proposition 208.

The staff makes no recommendations at this point. The issues discussed below are complex and the staff understands it may be difficult to assess how one decision impacts the other. However, based on the urgency expressed by members of the regulated community for consideration of issues pertaining to section 85316, staff believed it was appropriate to present the issues for discussion to provide the Commission an opportunity to guide the staff on how to further proceed.

REGULATON 18531.6
DECISION 1 – EFFECTIVE DATE OF STATUTE

Section 85316 provides in relevant part that a contribution for an election, "*may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election...*"

One question raised is whether the phrase "from the election" means elections held on or before January 1, 2001, the effective date of Proposition 34. A related question is whether forbidding or limiting the acceptance by a candidate of contributions for pre-2001 elections would be an impermissible "retroactive" application of the statute.

An impermissible "retroactive" application "applies the new law of today to the conduct of yesterday." *Rosasco v. Commission on Judicial Performance*, 82 Cal. App. 4th 315, 322 (2000). A statute is not "retroactive" merely because some of the facts upon which its application depends came into existence before its enactment. *Kizer v. Hanna*, 48 Cal. 3d 1, 7 (1989). In other words, a statute operates retroactively when it changes the legal consequences of an act *completed* before the effective date of the statute. *Florence Western Medical Clinic v. Bonta*, 77 Cal. App. 4th 493, 502 (2000). The courts in California generally disfavor giving retroactive effect to a new law. *Evangelatos v. Superior Court*, 44 Cal. 3d 1188, 1207 (1988). Thus, absent clear legislative intent to the contrary, courts generally presume that a new statute is not meant to have retroactive effect. *Id*.

In addition to its limitation of acceptance of post-election contributions to an amount not exceeding net debts outstanding from the election, section 85316 also requires that any contribution "not otherwise exceed the applicable *contribution limit for that election*" (emphasis added). Therefore, the next question is determining what the applicable contribution limits are for the election in question. Sections 85301 and 85302 impose "per election" limits, based on which statewide elective office the candidate is running for. Specifically, section 85301(a) states:

> A person, other than a small contributor committee or political party committee, may not make to any candidate for elective state office other than a candidate for statewide elective office, and a candidate for elective state office other than a candidate for statewide elective office may not accept from a person, any contribution totaling more than three thousand dollars ($3,000) per election.

The other subsections of section 85301 and of section 85302 contain virtually identical language applying different contribution limits to different levels of elective office. The effect of these sections is to prohibit any present-day contributor from making, and any present-day candidate from accepting, any contribution in excess of the limits set forth in those sections "per election."

In dealing with similar issues under Proposition 208, the Commission's approach was to focus on the date a committee was created and the committee's transfer activity. Although there were no provisions governing acceptance of post-election contributions, Regulation 18530.1, which has been repealed (repeal effective June 4, 2001), addressed the treatment of funds raised prior to the effective date of Proposition 208 as follows:

> "(a) Contributions deposited in a controlled committee prior to January 1, 1997, are not subject to the California Political Reform Act of 1996, if those funds are held in a controlled committee that was established pursuant to Section 84101 prior to January 1, 1997. Such funds become subject to the California Political Reform Act of 1996 if they are:
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> "(1) Transferred to, or held in, a committee formed after January 1, 1997, pursuant to Government Code Section 85200 and 85201, and designated for an election to be held after January 1, 1997;
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> "(2) Transferred to, or held in, an officeholder account formed after January 1, 1997, pursuant to Government Code Section 85313."

Under Regulation 18530.1, contributions deposited in a controlled committee prior to the effective date of Proposition 208 were not subject to its provisions. However, as soon as the funds were transferred to any committee or account subject to or authorized by Proposition 208, the funds became subject to Proposition 208. In other words, ongoing conduct that took place after the effective date of the statute was subject to the provisions of Proposition 208, and the pre-Proposition 208 funds became subject to Proposition 208 by virtue of the ongoing use of the funds.

Regulation 18531.6, subdivision (a). Applicability of Statute to Contributions for Elections Held Prior to January 1, 2001.

In subdivision (a), **option a,** the limitations would apply to elections that took place prior to January 1, 2001 as follows:

> (a) **Pre-2001 Elections Limited.** The contribution limits of Government Code sections 85301 and 85302 apply to contributions accepted by a candidate for elective state office on or after January 1, 2001, including contributions for an election held prior to January 1, 2001. However, Government Code section 85316 does not apply to contributions made to a statewide elective office committee until November 6, 2002.

Because it regulates conduct not completed prior to January 1, 2001, **option a** would not constitute an impermissible "retroactive" application of Proposition 34. The conduct being regulated by section 85316 is present-day fundraising, albeit for elections held prior to the effective date of the statute. However, consistent with the language of section 83, the limitations on the acceptance of contributions would not apply to statewide candidates until November 6, 2002. The effect of selecting this option would be to apply the Proposition 34 contribution limits to elections that have already taken place.

In contrast, **Option b** would not regulate ongoing conduct except to the extent the Commission adopts subdivisions (b) through (h) of this regulation (**Decision 1, option (b)(1)**).

> **{Decision 1, option b}** (a) **Pre-2001 Elections Not Limited, Subject to Conditions.** The contribution limits of Government Code sections 85301 and85302 apply to contributions accepted by a candidate for elective state office on or after January 1, 2001, as specified below.
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> (1) Government Code section 85316 does not apply to contributions for an election held prior to January 1, 2001**[{Decision 1, option (b)(1)}**, subject to the limitations of subdivisions (b) through (h) of this regulation]. The applicable contribution limits, if any, are the contribution limits in effect prior to January 1, 2001 for that election.
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> (2) Government Code section 85316 does not apply to contributions made to a statewide elective office committee formed [**{Decision 8, option b}**or redesignated pursuant to subdivision (h) of this regulation] for an election for statewide elective office held prior to November 6, 2002, if all the conditions of 2 Cal. Code Regs. section 18536 are met.

Section 85316 states that a post-election contribution may be accepted only to the extent that the contribution does not exceed net debts outstanding from the election, "*and the contribution does not exceed the applicable contribution limit for that election*." This can be read to mean that if there were no contribution limits in effect at the time of the election for which the contribution is being made, then an unlimited contribution may be made and accepted, even after January 1, 2001, notwithstanding the provisions of sections 85301 and 85302. Likewise, if a $1,000 limit were in place for the particular election, that would be the allowable limit for a post-election contribution as well. The regulated community expressed a strong collective opinion at the interested persons' meeting that this was the appropriate interpretation to adopt.

This interpretation would effectively generally confine application of section 85316's post-election contribution limitations to elections held on or after January 1, 2001. Selection of this option would allow candidates elected to office in elections held prior to January 1, 2001, to

raise post-election funds without limitations. The only exception would be in the case of a pre January 1, 2001 special election, governed by the Proposition 73 limit of $1,000.

Selection of the bracketed language in **Decision 1, option (b)(1)**, provides a modified approach to this second option, by allowing post-election fundraising, but with some limitations intended to preserve the contribution limits and related provisions of Proposition 34. These limitations are specified in subdivisions (b) through (h) of the regulation discussed below.

Summary

Sections 85301 and 85302 impose contribution limits "per election," which implies for "any election," regardless of whether that election took place before or after January 1, 2001. Section 85316, however, contains the phrase "and the contribution does not otherwise exceed *the applicable contribution limit for that election.*" (emphasis added.) This phrase can also be read to mean the specific contribution limit in effect for the particular election for which the contribution is being made. At least two approaches can be taken in interpreting this statute. The options presented by proposed regulation 18531.6 reflect either reading.

Option (a) would apply present contribution limits to contributions made now for past elections, as well as for future elections. This option seeks to regulate current debt fundraising. **Pros**: Candidates would be prevented from raising unlimited funds for past elections. **Cons**: Some would consider this approach a retroactive application of the statute.

Option b, without Option (b)(1) would apply the contribution limits as of January 1, 2001, but not for elections held prior to January 1, 2001. The applicable contribution limits would be the limits in effect prior to January 1, 2001, for each election. **Pros**: Selection of this option would allow candidates elected in pre-January 1, 2001, elections to continue to raise funds. **Cons**: There would be no cap on the amount of funds a candidate could raise for an election that has already taken place.

Option b, with Option (b)(1) would not generally affect contributions made for an election held prior to January 1, 2001. However, **Option (b)(1)** would place some limitations on current post-election fundraising. **Pros:** Selection of this option would also allow candidates elected in pre-January 1, 2001, elections to continue to raise funds, but subject to certain limitations. **Cons**: This option is a more complicated approach.

DECISION 2 – PER CONTRIBUTOR LIMITS

Subdivision (b). Aggregation of Contributions from the Same Contributor.

Subdivision (b) of the proposed regulation would require aggregation of all contributions from the same contributor for the same election. This would generally ensure that a contributor

does not exceed the contribution limits of Proposition 34, sections 85301 and 85302, with respect to any election.

For example, if **Decision 1, option a** is selected, the contribution limits of sections 85301 and 85302 apply to a Senate election held prior to January 1, 2001, although there was no limit to that election. If a contributor gave up to or in excess of the current limit, an additional contribution may not be accepted. However, contributors to special elections who could not contribute more than $1,000 prior to January 1, 2001 may now contribute up to the contribution limits of sections 85301 and 85302 if **Decision 1, option a** is selected because it applies the Proposition 34 contribution limits to contributions made after January 1, 2001.

If **Decision 1, option b** is selected, a contributor could make unlimited contributions for the Senate race because there were no contribution limits in effect for that election prior to January 1, 2001. In contrast, a contributor could only give up to $1,000 for the special election race held prior to January 1, 2001, because that was the limit in effect then.

If **Decision 1, Option (b)(1)** is also selected, a contributor could contribute up to the limits of sections 85301 and 85302. If he or she contributed in excess of these limits prior to January 1, 2001, no additional contribution could be made. As to a special election, a contributor who gave $1,000 could give up to $3,000.

Pros: Subdivision (b) would aggregate contributions from the same contributor, limiting post-election fundraising to the contribution limits of Proposition 34. **Cons:** It would require attribution of all contributions from the same contributor for the same election, which may be burdensome to the candidate, depending on how long ago the election was held.

DECISIONS 3 AND 4 – CUMULATIVE TOTALS AND PURPOSE OF CONTRIBUTION

As mentioned above, one issue concerning the language of section 85316 is the extent tho which this section limits post-election fundraising. Is a candidate required to pay his or her campaign debts with funds raised pursuant to section 85316, or does section 85316 merely provide a fundraising cap, with little or no restrictions on how the candidate may spend money raised? Decisions 3 and 4 address these issues.

Decision 3. Cumulative Totals.

Decision 3 adds subdivision (c) to provide that the cumulative totals of contributions per election may or may not exceed the amount of "net debt outstanding," as defined in subdivision (f) of the regulation.

Decision 4. Purpose of Contribution.

The Act under Proposition 208 expressly provided for a segregated "officeholder expense fund," with aggregated contributions limited to $10,000 per calendar year. Each contributor was limited to contributions totaling $250 per year, and a contribution to an officeholder account was not considered a campaign contribution. (Govt. Code § 85313, repealed by Prop. 34). In contrast, Proposition 34 is completely silent on the issue of officeholder funds or expenses, except that Proposition 34 did not repeal Government Code section 89512, which has been in effect since 1990. Government Code section 89512 states:

> An expenditure to seek office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political purpose. *An expenditure associated with holding office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a legislative or governmental purpose.* Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose. (emphasis added.)

In the past, when there has been no specific provision for officeholder expenses, Commission staff has advised candidates that campaign funds could be used for expenditures associated with holding office, as set forth in section 89512. However, the passage of section 85316, coupled with the term limitations imposed on certain elected officials has created uncertainty about a candidate's ability to raise funds for officeholder expenses. This is particularly true with respect to "termed-out" legislators, because they can neither raise funds for past elections in excess of their net debts outstanding, nor can they raise funds for a future election. The result is that they may have no funds available for officeholder expenses.

Decision 4, option a adds subdivision (d) and provides:

> **{Decision 4, option a}** (d) **Conditions of Acceptance.** A candidate for elective state office, including officeholders prohibited by term limits from seeking another term, may only accept contributions pursuant to Government Code section 85316 for payment of net debts outstanding for an election.

Under this option, all candidates, including "termed-out" officeholders would be prohibited after an election from raising funds to be used for officeholder expenses. As explained above, while Proposition 208 expressly provided for raising "officeholder funds," Proposition 34 is completely silent on the subject. Historically, the Commission has advised officeholders that they could use "campaign funds" for what has become known as "officeholder expenses," pursuant to section 89512. However, a strict literal reading of section 85316 would preclude some officeholders (those who are prohibited by term limits from seeking another term in office) from raising any funds for use as "officeholder expenses," because they may only raise

funds to pay net debts outstanding for an election. Under this reading of section 85316, "termed-out" officeholders may only accept contributions to the extent that such contributions do not exceed net debts outstanding.

This option is based on the plain meaning of the statute. The plain meaning of a statutory provision is generally accepted where there is no ambiguity. *Day v. City of Fontana*, 25 Cal. 4th 268, 272 (2001). However, section 85316 is not necessarily without ambiguity, as evidenced by the amount of discussion and debate it has generated. Where the statutory terms are ambiguous, the rule is to "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and to avoid an interpretation that would lead to absurd consequences." *Id.* 'These rules apply equally in construing statutes enacted through the initiative process." *Id.* The courts have specifically acknowledged the Commission's "duty to implement the intent and not the literal language of the statute." *Watson v. Fair Political Practices Commission*, 217 Cal. App. 3d 1059, 1076 (1990).

Some members of the regulated community strongly oppose this interpretation of section 85316. Responsive to these members, the Legislative Counsel's Office issued an opinion dated March 22, 2001, stating that section 85316 did not preclude termed-out officeholders from raising funds to be used for officeholder expenses. The Legal Division staff has reviewed the Legislative Counsel's opinion and disagrees with portions of its analysis of the statute.

The Legislative Counsel argues that construing section 85316 as precluding termed-out officeholders from raising officeholder funds would violate the Equal Protection Clause of the U.S. and California Constitutions, by creating a class of members of the Legislature (termed-out members) who are treated differently from other members of the Legislature (those who are not termed-out). However, those classes already exist by virtue of the term limits statutes, which have already been found to be constitutional. Simply put, they are not protected classes under either the U.S. or California Constitutions.

Further, the Legislative Counsel makes the argument that section 85316 only limits post-election contributions made to retire debt, but "has no application to contributions received after the election that are not used to retire debt outstanding from the previous election." Staff's conservative reading of section 85316 has been that it restricts all post-election contributions to the amount of net debts outstanding from the previous election, and that all post-election contributions are subject to that limitation. Section 85316 does not appear to make allowance for contributions "that are not used to retire debt outstanding."

It should be noted that an approach was suggested by a member of the regulated community that would allow candidates to raise campaign funds regardless of their ability to run for future office. Under the suggested approach, such contributions would be subject to the limits of sections 85301 and 85302, and they would be tied to an election if the officeholder were running for another office, but they would not constitute a "contribution for an election" pursuant to section 85316. Thus, termed-out officeholders would not be precluded by section 85316 from raising funds to be used for officeholder expenses. One major concern with this approach is the

creation of the concept that for purposes of section 85316, certain "payments" do not count as "contributions for an election." A payment for a political purpose is a contribution. (Section 82015, Regulation 18215.) Staff is hesitant to draw this distinction without thoroughly considering unintended consequences. However, in response to the comments, staff drafted a separate option that may lead to the same result.

Decision 4, option b provides the following:

> **{Decision 4, option b}** (d) A candidate for elective state office, including officeholders prohibited by term limits from seeking another term, may accept contributions pursuant to Government Code section 85316 for:
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> (1) Payment of net debts outstanding for an election; and
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> **{Decision 4, option (b)(1)}** (2) Payment of officeholder expenses.
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> **{Decision 4, option (b)(2)}** (2) Payment for officeholder expenses, but only for officeholders prohibited by term limits from seeking another term, who on January 1, 2001, did not have net debts outstanding. Contributions accepted pursuant to this subdivision are subject to the following:
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> (A) The limitations set forth in Government Code sections 85301, 85302 and 85306 and Cal. Code of Regs. section 18536; and
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> (B) The contributions may only be accepted in an amount **{Decision 4, option (b)(2)(A)}** necessary to cover current officeholder expenses **{Decision 4, option (b)(2)(B)}** not to exceed [$5,000/$10,000,] at any one time.

Option b would also allow post-election fundraising to pay for net debts outstanding by *any* candidate. (**Decision 4, option(b).**) In addition, post-election fundraising for officeholder expenses would be allowed. Selection of **Decision 4, option (b)(1)** would mean any candidate could raise an additional amount for officeholder expenses. Selection of **Decision 4, option (b)(2)** would limit such fundraising to officeholders who have no debt. This is a narrow exception to address only the "termed out" issue. Subdivisions (d)(2)(A) and (d)(2)(B) would place limitations on officeholder expense fundraising.

Finally, subdivision (d)(3) of the regulation defines the term "officeholder expenses" to mean an expenditure that bears either a reasonable or direct relationship to a legislative or governmental purpose pursuant to Government Code sections 89510-89518, and which will directly assist the officeholder to further his or her official duties. To ensure payments for a political purpose would not be considered officeholder expenses, the regulation also provides that an expenditure that bears a reasonable or direct relationship to a political purpose would not be considered an officeholder expense. Furthermore, an expense paid by the officeholder's government agency, or reimbursed by the agency, is not an "officeholder expense."

Staff considered a third approach, which would be to permit fundraising for any purpose allowable under sections 89510 – 89518, including to make payments that have a political purpose. The members of the regulated community in attendance at the interested persons meeting expressed a preference for this approach. It was the collective opinion that it was the intent of section 85316 to prevent contributors from giving more than the maximum contribution allowed for each election, but that it was not intended to regulate how a candidate spends his or her money, or whether or not he or she pays his or her debts. However, there appears to be no evidence in the language of the statute, and no extrinsic evidence of legislative intent to support this view.

This concept is also more closely aligned to the idea that section 85316 allows only for a fundraising cap. However, it would also not address how candidates with no debt could fundraise. Staff believes both options in **Decision 4** present a reasonable interpretation of section 85316.

Summary:

Option a: Pros: This option limits post-election fundraising to payment of net debts outstanding for an election. **Cons:** This option has the effect of precluding "termed-out" officeholders from raising funds to be used for officeholder expenses.

Option (b)(1): Pros: This option would allow officeholder fundraising for any candidate. **Cons:** This option may be too broad. If section 85316 provides for a fundraising cap, this may allow circumvention of that cap.

Option (b)(2): Pros: This option would create a limited window of exemption, allowing officeholder fundraising only for those legislators who are "termed-out" and who did not have net debts outstanding. **Cons:** It is difficult to preserve section 85316 as a "fundraising cap" and simultaneously allow candidates who have no debt outstanding to raise funds as section 85316 is currently worded.

DECISION 5 – FUNDRAISING COSTS

Subdivision (e) allows a candidate to raise funds to cover fundraising costs in addition to the funds in the amount of "net debts outstanding." This recognizes the practical reality that there are costs associated with raising campaign funds. Proposition 34 acknowledged the existence of such costs in Government Code section 85318, which provides for the return of contributions for the general election if a candidate is defeated in the primary "less any expenses associated with the raising and administration of general election contributions."

DECISION 6 – DEFINITION OF NET DEBTS OUTSTANDING

Section 85316 limits contributions to the amount of "net debts outstanding." However, "net debts outstanding" is not defined anywhere in Proposition 34. Subdivision (f) would provide this definition, which is a modified version of the one found in the Federal Election Commission's Regulations at 11 C.F.R. § 110.1(b)(3)(ii). Basically, the amount that may be raised is reduced by the amount of incoming contributions.

DECISION 7 – CONDITIONS ON TRANSFERS

Decision 7 adds subdivision (g) in response to a public comment. **Option a** would require a candidate to pay his or her debts prior to transferring any funds to a new controlled committee pursuant to Government Code section 85306 and proposed regulation 18536. Personal loans from the candidate to his or her controlled committee are excepted. This would allow the candidate to retain personal debt, but would require payment of all other debts prior to making any transfers.

Under **option b** the candidate would be permitted to transfer funds raised for post-election debt to a new controlled committee pursuant to section 85306 and proposed regulation 18536 without first paying the debts from that election.

The disadvantage to **option b** is, that if a candidate is only permitted to raise funds for past elections up to the amount of net debts outstanding, and net debts outstanding are reduced as contributions are received, eventually, the candidate will reach the limit of his or her fundraising capacity for that election. If the candidate is then permitted to transfer that money without paying the debt, how will the debt ever be paid, given the fact that the candidate is precluded from raising any more funds to pay the debt?

DECISION 8 – RE-ELECTION

Subdivision (h) pertains to a candidate who intends to run for re-election to the same office, and who has net debts outstanding after the previous election. It was also included in response to public comment. **Option a** would require the candidate to establish a new controlled committee for his or her next election.

Under **option b**, a candidate who intended to run for re-election to the same office would be permitted to redesignate his or her controlled committee that had net debts outstanding, subject to the requirements of the Act. This option would also allow a candidate to establish a new controlled committee for his or her re-election campaign, as well. This is the preferred option of the regulated community. (Also see subdivision (a)(2) of the regulation.)

Option a would not permit redesignation. The regulated community stated that, while it is easier to establish a new controlled committee for a new election, it would prefer that it not be required to do so. Redesignation is a broader issue than the one addressed in this regulation.

The Commisson may want to address "redesignation" issues in a broader context. In addition, if the Commission approves the staff's June Regulatory Work Plan Revisions, this issue will be examined separately.

REGULATION 18531.7

As noted above, Proposition 208 expressly provided for the establishment of "one segregated officeholder expense fund . . . provided aggregate contributions to such fund do not exceed ten thousand dollars ($10,000) within any calendar year and that the expenditures are not made in connection with any campaign for elective office or ballot measure." (Govt. Code § 85313(a), repealed by Prop. 34.) Section 85313 also provided for a contribution limit of $250 per calendar year, and that such contributions were not considered campaign contributions.

To implement section 85313, the Commission adopted regulations requiring the formation of an officeholder account, separate from any campaign bank account. (Reg. 18531.4, repeal effective June 4, 2001.) Proposition 208 became effective on January 1, 1997, and on January 6, 1998, enforcement of Proposition 208 was enjoined by the U.S. District Court for the Eastern District of California. The passage of Proposition 34 repealed the vast majority of Proposition 208, including section 85313. Therefore, the Court lifted the injunction on January 1, 2001, the date that Proposition 34 took effect. This created a situation in which it is possible that there may still be candidates who have funds in officeholder bank accounts that were established under the authority of Proposition 208, which has since been repealed. Since the authority for those bank accounts no longer exists, Staff felt that it was prudent to provide guidance to those candidates as to how to direct the funds in those accounts.

These proposed regulations are directed to individuals currently holding office because section 85313 expressly directed that any funds remaining in an officeholder account after the officeholder leaves office should be turned over to the General Fund.

Option 1 (page 1, lines 3-7)

This option would require the officeholder to transfer the funds currently in a Proposition 208 account into any committee currently controlled by the candidate, but would require the committee to keep the funds administratively segregated. The reason for this is that the funds were expressly precluded from being used for campaign purposes at the time they were raised under Proposition 208. Therefore, this option would require the candidate to specifically designate the funds to be used for officeholder expenses, which is the purpose for which they were raised.

Option 2 (page 1, lines 8-12)

This option would allow the officeholder to keep the separate officeholder bank account open, but would require that the funds be spent on officeholder expenses no later than January 1,

2005. Because the maximum amount of money that could be deposited in this account would be $10,000, plus any interest that may have accrued since January 6, 1998, the Commission may choose to set a shorter deadline, if it chooses this option. This option also makes it clear that no further funds may be deposited in this account.

Attachments

Regulation18536.1
Regulation 18531.7